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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 955

JOHN J. FELICE, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR REHEARING OF THE ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

P. D. MAKTOS,
JOHN MAKTOS,
3700 Massachusetts Ave., N.W.
Washington 16, D. C.

MOSES KRISLOV,
566 Hanna Building
Cleveland, Ohio

Counsel for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Petitioner John J. Felice, respectfully prays that, pursuant to paragraph 2 of Rule 58 and Rule 19 of the Revised Rules of this Honorable Court, a rehearing be granted of the order of this Honorable Court, entered in this case on May 13, 1963, denying the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

The petitioner respectfully shows as follows:

During the petitioner's trial in the United States District Court for the Northern District of Ohio, Eastern Division, the *admission of Internal Revenue Form 870* was objected

to by petitioner as being inadmissible evidence. The District Court nevertheless *admitted* it and held this evidence to be "*significant*" in its opinion and in arriving at its decision. The aforesaid Court of Appeals, in this case, *sustained* the District Court's admission of this evidence in disregard of petitioner's objection and *contrary* to the decision of the Court of Appeals for the Eighth Circuit in the case of *Clark* v. *U. S.*, 211 F. 2d 100, in which that court *held Internal Revenue Form 870 to be inadmissible* and which case had been cited by petitioner. See also *Beck* v. *U. S.*, 298 F. 2d 622, 633 and *Schneider* v. *Kelm*, 137 F. Supp. 871, 875.

Petitioner, therefore, in compliance with paragraph 2 of Rule 58 of the Revised Rules of this Honorable Court, prays that Internal Revenue Form 870 and the *conflicting opinions* of the aforementioned circuit courts fall well within the purview of the said paragraph 2 and of Rule 19 and of the said Revised Rules.

RELIEF

For the foregoing *substantial* reasons, petitioner prays that a rehearing be granted in this case.

Respectfully submitted,

P. D. Maktos,
John Maktos,
3700 Massachusetts Ave., N.W.
Washington 16, D. C.

Moses Krislov,
566 Hanna Building
Cleveland, Ohio

Counsel for Petitioner

AFFIDAVIT

City of Washington
District of Columbia } ss:

I, the undersigned, P. D. Maktos, counsel for petitioner, John J. Felice, in the above-captioned case, being duly sworn, declare and say:

1. On May 13, 1963, the Supreme Court of the United States denied petitioner's petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit in the aforesaid case.

2. On May 14, 1963, the petitioner, pursuant to paragraph 2 of Rule 58 of the Revised Rules of the said Court, filed before the Honorable Potter Stewart, an application to stay the order denying petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit, pending the filing of a petition for rehearing of the said order denying the writ of certiorari.

3. The petitioner also filed, on May 15, 1963, before the said Court, a petition for rehearing of the order denying petition for a writ of certiorari.

4. The affiant affirms that the petition for rehearing was filed in good faith and not for dilatory purposes. He also affirms that the petition was filed for good and substantial reasons in that the issue of law referred to in the petition for rehearing had not been poignantly raised in the petition for certiorari.

5. In the light of the fact that the co-relationship between the word "poignantly" and the aforesaid Rule 58 and 19 might be subject to criticism so far as the aforesaid petition for rehearing is concerned, your affiant, mindful and consciously aware of the responsibilities of this Court, is constrained to explain in this affidavit the application of the issue of law raised in the petition for rehearing with reference to its substantial compliance with Rules 58 and 19.

a. Though the question of Internal Revenue Form 870 was raised before the District Court as a factual and evidentiary matter and preserved before the Court of Appeals and incorporated in the petition for certiorari to the Supreme Court of the United States, the question regarding Internal Revenue Form 870 had never been raised as a matter of conflict between opinions of courts of appeal.

b. Your affiant, having filed petition for certiorari before the court of last resort, failed in the pursuit for the justice sought for the petitioner, by incorporating Internal Revenue Form 870 as being an issue at law which raised questions of evidentiary value rather than of conflicts between courts of appeal.

c. Your affiant, also mindful of Mr. Justice Brennan's statement that "many of our most precious guarantees of liberty and human dignity are at hazard in criminal procedures." (An address on the occasion of the celebration of the Golden Anniversary of the Harvard Legal Aid Bureau, Harvard Law School, 1963.), and believing that in this case not only human liberty and dignity, but law and justice are at hazard, submits the petition for rehearing in the hope that the court of last resort would not be critical of your affiant should they consider Rule 58 at variance with your affiant's interpretation.

The affiant prays this Court's indulgence with respect to the length of this affidavit.

Respectfully submitted,

P. D. MAKTOS
Counsel for Petitioner